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To meet the challenge of equal educational opportunity, current methods of public school finance must be revised. The present financial system, based on State equalization of local property tax valuation, is inequitable since it results in many school districts, particularly those in large cities, having inadequate resources to meet extraordinary needs. The Detroit experience dramatizes this nationwide dilemma: In less than a 10-year period the State equalized valuation has decreased by a billion dollars while the pupil population, containing a large proportion of the State's disadvantaged children, has increased. In response to the seemingly impossible task of providing equal education to an increasing enrollment with decreasing resources, the Detroit Board of Education has filed suit against the State of Michigan, charging that the State has failed to provide equal educational opportunities in violation of the Equal Protection Clause of the Fourteenth Amendment. A court's finding in favor of the school district's claim, or a favorable decision for the plaintiff in similar cases currently being contested elsewhere, could lead to the transfer of public school finance from local to State authority for more equitable allocations. (JH)

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DETROIT'S FIGHT FOR EQUAL EDUCATIONAL OPPORTUNITY*

by

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DETROIT'S FIGHT FOR EQUAL EDUCATIONAL OPPORTUNITY

The Decision of the Detroit Board of Education to file suit against the State of Michigan challenging the constitutionality of the present method of financing public education in the State, may be considered at first blush a bold, radical step. In truth, it is conservative in the true sense of the word, which is defined in the dictionary as "involving the preservation of existing institutions." This lawsuit has as its purpose to conserve and protect the American system, which has as its touchstone equal opportunity for free public education.

The Northwest Ordinance of 1787, which included in its territory what later became the State of Michigan, proclaims:

> "Schools and the means of education shall forever be encouraged."(1)

Alexis de Tocqueville said in his classical work, "Democracy in America":

> "It cannot be doubted that in the United States the instruction of the people powerfully contributes to the support of the democratic republic ... politics are the end and the aim of education."(2)

Free public schools became a reality in America during the years 1830 to 1860. Children could attend these schools without a tax being levied on them for attending. Financing the schools was not tied to the wealth of the student's family. It is plain that in large part public education was a plan to educate the poor. Education was to be the great social equalizer by which each individual found his place in society on the basis of merit and ability alone. As Horace Mann said:

> "Education ... beyond all other devices of human origin, is the great equalizer of the conditions of man - - the balance wheel of the social machinery - - It does better than to disarm the poor of their hostility towards the rich; it prevents being poor."(3)

The states started out by delegating the task of public education to the local communities.(4) Local communities were required to finance their own schools with local funds alone. As a result, public schools varied in quality with the wealth of the community.

The Flat Grant System:

In 1906 Ellwood Cubberley, an early exponent of equal educational opportunity, called for the states themselves to participate in the financing of public education. He advocated that states supplement local resources with so many dollars per pupil or per teacher, the so-called "flat grant" system of finance.

This was a pittance to the poorer districts in their attempts to provide a modicum of public education and did not bring about equal educational opportunity. State money was paid to all districts on the same basis, and the program did not offer any hope of bringing the product provided to the poor closer to that provided to the rich.

The Foundation Program:

The next step in the effort to bring about equal educational opportunity came in the 1920's through George D. Strayer and Robert M. Haig. They developed what today is known as the "foundation program" in state school finance. Under this program a district would be guaranteed a certain minimum amount per student if it was willing to tax itself so many mills. For example, if the established minimum was $200 per pupil, and the state equalized valuation of a district was such that by taxing its property owners 20 mills it could not raise $200 per pupil, the state would make up the difference. It was felt that this program would achieve equal educational

opportunity. In 1933 the Report of the National Conference on the Financing of Education included a School Finance Charter with various planks calling for the adoption of the foundation program. This included a proposal for an adjustment for wealth which would equalize educational opportunity.(5)

In 1936 the League of Women Voters joined the fight for the foundation program, declaring,

> "School Finance and School Districts, [T]he state should offer all children equal educational opportunities."(6)

With broad support, the foundation program of public school finance was widely adopted. This is the basic school finance program we have in most states today. It is the program we have in Michigan.

The Failure of the Foundation Program:

Today we recognize that the foundation program of school finance has failed us. It has failed to provide the equal educational opportunity we expected. It has failed because in many states the minimum amount guaranteed by the state is far below the amount required for a minimally adequate education. The state equalized valuation in the poorer local school districts is such they must tax themselves at many times the rate a wealthy district taxes itself to raise the same amount for education. In Michigan the River Rouge District's property valuation per pupil is $53,156, while the Forsyth District's is $1,319 per pupil.(7) In Illinois the Monticello District has $114,000 per pupil property valuation for taxation, and the Bridgeport District has $3,000.(8) In California, the Big Creek District has $306,077 per pupil property valuation; the Olinda District has $3,698.(9) In New York the range is from over $200,000 to under $5,000.(10)

The present system of school finance has failed, among other reasons, because it does not recognize that many districts, particularly those in large cities, are overwhelmed with other demands on the property tax for such essential items as police protection and welfare, and therefore cannot allocate enough for education.

The present system has failed because it does not even provide for equality in per pupil expenditures among the various school districts, let alone take account of differences in construction and maintenance costs and teacher salaries, or the added costs some districts face in educating those disadvantaged children who show up at school less able, and not yet ready, to learn. In California per pupil expenditures vary from $265 to $1,353;(11) in New York, from $470 to $1,600;(12) and in Virginia from $541 per pupil in Arlington County to $72 per pupil in Buchanan County.(13) The variation is to the disadvantage of the poor districts with the most disadvantaged children.

Think of what all of this means in terms of class size, teacher training and quality, remedial programs, compensatory education programs, age and condition of school plant, quality and quantity of textbooks, science equipment, language labs, physical education facilities, counseling and psychological assistance, and so on.(14) All of this, as Dr. James Conant has written, "jolts one's notions of the meaning of the concept of equality of opportunity."(15)

In a country which premises its political, economic and social system on the belief that every child is entitled to make the most of his own abilities, we are still preferring the education of some children over that of others. Generally speaking, the poor children of the inner city get the least, and the children of the affluent society get the most. The social cost of all this is not only the personal tragedies of those disadvantaged children to whom the lack of equal educational opportunity spells the end of the American dream. It is the waste involved in turning out candidates for the welfare rolls and prisons instead of productive citizens. It is the threat to our system involved in the social dynamite of alienation.

I submit to you that the failure lies in the present method by which we finance public education.

This isn't the fault of those school districts such as Detroit and other big cities, which have inadequate resources and extraordinary needs. It is the fault of the state which created those districts. It is the

state which is responsible for public education. Under the Michigan constitution, the State itself is explicitly charged with the responsibility of supporting and maintaining the public elementary and secondary schools in the State of Michigan.(16) The constitutions of 38 states explicitly provide that public education is the responsibility of the state.(17)

Public education and its financing has always been the responsibility of state government. Up until now most states have attempted to fulfill this responsibility by delegating out a substantial part of it to local school districts. When this system fails it is the state which is responsible. As the courts have said many times:

> "[A] contrary position would allow a state to evade its constitutional responsibilities by carve-outs of small units."(18)

To us on the Detroit Board of Education, this means that the State is responsible for what has happened in Detroit on account of inadequate resources.

The Detroit Experience:

Let me tell you a little bit about the Detroit public school system and the children who are in it. There are almost 300,000 children in our system. They do not meet national norms on the Comparative English Test. Nor do they meet national norms on the SCAT - STEP test battery. We have the dubious distinction of being above the national average in the number of young men not passing the selective service test.(19)

Every year we graduate approximately 13,000 children from our high schools. For the year 1966-67, we had 10,150 drop-outs.(20) In eight of our twenty-two high schools more than one-half of the starting freshman class will drop out without finishing. In some cases, it is more than 60%.(21) While the national drop-out rate is falling, ours is rising.(22)

Our high school diplomas are regarded by many employers as less than valid. The average black high school student who completes twelve years of schooling in the Detroit system scores at eighth grade level in reading comprehension and communication skills.(23)

Fifty-one percent of our elementary school classes are overcrowded. Simply to achieve statewide average, our system would need 1,650 more teachers and 1,000 additional classrooms. The cost for this would be sixty-three million dollars.(24)

Five to ten percent of the teachers we have now are not fully qualified, and 5% of our buildings are more than 50 years old.(25)

It costs more to get a teacher to come to Detroit. It costs more to acquire site for a building in Detroit. We have to build the building up instead of out, and that means higher construction and labor costs.

We have costs many other school districts outside of the big city don't face at all. Our attendance officers made some 125,000 phone calls last year. A very small percentage of it was for truancy. The majority of it had to do with children staying out of school due to poverty. They didn't have shoes. They didn't have glasses. They didn't have winter clothing, and so they didn't come to school.(26)

To a certain extent we pay the price for the whole nation's failure to provide equal educational opportunity. We have a very heavy influx of children from the South. Our records show that children who have been in Detroit less than five years and who are in the eighth grade are not doing as well as children who have been with us five years or longer. We have in our system right now between ten and fifteen thousand youngsters who have come from Southern states, and who are living, not with parents, but with a sister or uncle or some other relative.(27)

The mobility in our system is incredible. We have a school in our system which opens in September with 1,000 pupils and closes in June with 1,000 pupils ... only a different 1,000 pupils. It has a turnover rate of about 125% per year. We have pupils who move five or six times a year.(28) Isn't it obvious that it costs more money to educate these children?

These statements of inadequacy should not be taken as a reflection on the children involved. We believe any child is educable. But a child with the handicap

of poverty needs more help than he would need if he had the foresight to select affluent, educated parents to give him a headstart.

Where do we get the money to do the job we have to do in a big city such as Detroit? Our state equalized valuation has dropped almost a billion dollars in less than ten years, from $5,672,175,000 in 1960 to $4,807,698,000 in 1968. Yet our enrollment is up from 285,350 to 297,151.(29)

We have gone to the taxpayers in the past with some modest success, but our people can no longer afford to pay more taxes. The city is more and more a city of the black, the old, and the poor. Of our almost 300,000 children, as of two years ago 57% were black.(30) As of now the figure is approximately 60%. This is up from 40% eight years ago. We have 265,000 people over the age of 65 in our city. This figure has tripled in less than 15 years. These people are paying their share of property taxes. In total property taxes for city, county and school purposes, their tax effort is 3.15 times the tax effort of Dearborn and 2.67 times the tax effort of Grosse Pointe, yet they have no children in school.(31) The suburbs surrounding Detroit are able to spend up to $500 more per pupil than we are able to spend in Detroit, and their people can afford it better than the people of the core city.(32)

To the fullest extent of its resources the Detroit School Board has tried to provide equal educational opportunities for the children in our district. To that extent we have instituted new educational and teaching techniques in our schools. We have tried to pay a competitive wage which would bring the best teachers into our schools. Some thirty-eight percent of our teachers are black, and about twenty-one percent of our administrators, a recent and continuing trend. We have tried to replace our outdated and obsolete facilities. The result is that we had a deficit of 6.6 million dollars last year, and will have a deficit of 8.4 million dollars this year. We are at our tax limit, and can tax no more.

Detroit Board of Education v. State of Michigan:

In February, 1968, knowing that we had exhausted all other approaches, the Detroit Board of Education filed suit against the State of Michigan charging that the State had failed in its responsibility to provide equal educational opportunities to the children of our district in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

What is the theory of our case? The Fourteenth Amendment provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. In the area of public education, this has been interpreted by the Supreme Court to mean that when a state undertakes to provide public education, education becomes "a right which must be made available to all on equal terms." I quote from the Supreme Court's opinion in Brown v. Board of Education:

> "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms."(33)

The State of Michigan has undertaken to provide public education. Indeed it is expressly required to do so under the Michigan Constitution. The facts, as I stated them earlier, make it obvious that public education in Michigan has not been provided to all on equal terms.

We ask the Court in our suit to declare the present system of school finance in Michigan unconstitutional and to send the matter back to the state legislature for appropriate action. What we seek is equal educational opportunity for every child in the State. This is what public education is all about ... giving every child an equal chance to fulfill his potential. We can give a child no less and say that ours is a land of equal opportunity.

Just as special educational facilities and services are required to provide physically handicapped children, such as the deaf and blind, with educational opportunities comparable to those enjoyed by normal children, by the same logic special educational facilities and services must be provided children who are disadvantaged because they lack the necessary pre-school background and extracurricular educational experience in order to effectively learn. If education is to be an opportunity, it must relate to the needs of the pupil. The State recognizes this by providing extra money for the physically handicapped. It must do the same for those who suffer from the fact that their handicap doesn't show physically.

Our lawsuit against the State of Michigan is based on equal educational opportunity ... an idea whose time has come, or -- more accurately -- is long overdue. The necessary judicial precedent has been carefully laid. Brown v. Board decided that there can be no unlawful discrimination in the area of public education. The reapportionment cases of the early 1960's held that discrimination on the basis of geography was unlawful. The very recent and already famous decision by Judge J. Skelly Wright in the Federal District Court for the District of Columbia in Hobson v. Hansen required a program of compensatory education when such was necessary to provide equal educational opportunity to all the children in Washington's school system.(34)

Since our suit was filed last year, the idea of equal educational opportunity has been supported by the bringing of similar actions in Chicago, Illinois; San Antonio, Texas; Bath County, Virginia; Muskogee, Oklahoma; Kenosha, Wisconsin; and Los Angeles, California. We are told that five other large cities will be filing complaints shortly and at least 40 other city school boards are closely watching this litigation. The inadequacy of present public school finance will be coming relentlessly before the courts until a favorable conclusion is reached.

The Detroit suit, commenced by the Detroit Board of Education in state court, is now awaiting trial there. Meanwhile, a suit commenced in Federal Court by a group of citizens in Illinois received a quick ruling granting the State's Motion to Dismiss. These plaintiffs now have an appeal pending before the United States Supreme Court asking it to take jurisdiction of the case. Whether the Court will do so, or whether it will send the matter back for trial on the merits, remains to be seen.

The widespread support and interest in this subject is indicated by the names on the two friend of the court briefs just filed in the case, which is titled McInnis, et al v. Richard B. Ogilvie, et al.

One amicus brief in support of plaintiffs is by the National Education Association, the Urban Coalition, and the Lawyers' Committee for Civil Rights under Law. Another amicus brief in support of plaintiffs is by the American Federation of Labor, Congress of Industrial Organizations (AFL-CIO); American Federation of Teachers; American Jewish Committee; International Union, UAW; Scholarship, Education and Defense Fund for Racial Equality, Inc.; and the Western Center on Law and Poverty.

In its request to the United States Supreme Court to intervene as amicus in support of plaintiff, the National Education Association describes: "... the applicability of the Equal Protection clause to State allocation of resources to school children" as "an issue which has major implications for the financing of public education in every community, urban, suburban and rural, of America."

At the time our suit was commenced, there was relatively little published on the concept of equal educational opportunities and the inadequacies of present public school finance. Books and journal articles are appearing with increasing regularity.(35) The idea will not go away. Dramatic and essential changes in public school finance are inevitable.

It is of interest that the last two United States Commissioners of Education have strongly endorsed the idea of equal educational opportunity, as does the present Commissioner, Mr. Allen.(36) The momentum is picking up and will not subside until equal educational opportunity is a reality.

The impact of this type of litigation will be nation-wide, and the effects will be dramatic. But let me emphasize what will not be one of the effects. It is not our intent, nor is it our belief, that improvement of the educational opportunities in our system will be at the expense of suburban or outstate systems. We regard it as axiomatic that the 50% of the districts in our legislature that already have the resources to provide better than average educational opportunities are sufficiently represented in the legislature to see to it that their own programs aren't diminished, but rather that the total educational resources pie is increased. For similar reasons, we do not see any transfer of the administration of public schools from local to state authorities.

We do believe that a successful conclusion to this litigation will lead to the transfer of public school finance from local to state authority, and will probably mean the eventual end of the local property tax for school finance. A local district which is guaranteed by the State the difference between the amount it raises locally and the amount necessary to provide its children with equal educational opportunities will have little incentive to tax itself. This would achieve a result advocated by Dr. James Conant, that educational decisions at the local level be divorced from considerations of local taxes.(37)

I personally welcome the demise of the local property tax for school finance. It is inefficient and inequitable. Moreover, it would be better for public education if it were abolished.

Although he has not yet endorsed such a step, Dr. James Allen, the new United States Commissioner of Education, has pointed out that such a transfer of financing to the state level would help solve many pressing school problems, including school segregation and inefficiently small districts.(38)

Success in this litigation will result in a greater role for educators in future legislative determinations respecting the allocation among the local districts of the state's resources for education. When the state legislatures turn from their present preoccupation with state equalized valuation and millage to considering instead only those factors which tend to equalize the educational opportunities in different parts of the state, educators and educational researchers will have to be consulted and heard. It behooves educators and educational researchers to give more thought to these problems now. Their advice will be sorely needed by the legislatures as they tackle these questions of public school finance in a new frame of reference.

Finally, and most importantly, if this litigation succeeds, after 150 years public education will begin to fulfill its original purpose: ... to insure equal opportunity and end poverty. I truly believe that equal educational opportunity is the main answer to the problems of race and poverty which confront America today ... both rural and urban America. It is for this reason ... above all others ... that we must succeed. We ask your continuing support.

FOOTNOTES

(1) Ordinance of 1787, Article III, Sec. 14.

(2) New York, Vintage, 1954, pp. 329-330.

(3) F. Keppel, The Necessary Revolution in American Education (1966), p. 5.

(4) See generally concise history of school finance found in S. Sugarman, Readings for Sessions on Public School Finance (Unpublished 1967). The writer is indebted deeply to Mr. Sugarman, from whom he has borrowed and paraphrased in detailing the history of public school finance.

(5) Ibid.

(6) Ibid.

(7) J. A. Thomas, School Finance and Educational Opportunity in Michigan (1968) p. 2.

(8) Plaintiff's Brief in Opposition to Defendants' Motion to Dismiss in McInnis v. Ogilvie (D.C., N.D. Ill.).

(9) Complaint in Serrano v. Priest (Calif. Super. Ct., L. A. County).

(10) J. E. Allen, Jr., "The State, Educational Priorities, and Local Financing", Integrated Education, (Sept.-Oct. 1968) p. 55.

(11) op. cit. supra, n. 9.

(12) op. cit. supra, n. 10.

(13) Study Committee, Raising the Level of Public Education in Virginia (1967) pp. 98-103.

(14) See Conant, Slums and Suburbs (1961), pp. 2-3; Keppel, supra, note 3 at p. 17; Thomas, supra, note 7, at p. 22.

(15) Conant, supra, note 14.

(16) Michigan Constitution of 1963, Article VIII, Sections 1 and 2.

(17) Those states are: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wyoming. George M. Johnson, "The Constitutional, Legislative and Decisional Law As It Relates to the Purposes of Public Elementary and Secondary Education Maintained in the Fifty States of the United States" (Unpublished Manuscript, 1968); p. 2, n. 3. The U. S. Supreme Court has ruled on many occasions that the state acts through the smaller units it creates. e.g. Cooper v. Aaron, 358 U.S. 1, 16(1958). The practical effect of these decisions is to make all fifty states responsible for public education.

(18) Allen v. County School Board of Prince Edward County, 207 F. Supp. 349, 354 (D.C., E.D. Va. 1962) aff'd 377 U.S. 218 (1963).

(19) Report of the Detroit High School Study Commission (1968 p. 108).

(20) Michigan Department of Education, Annual School Holding Power Report (1966-67).

(21) Report, supra, n. 19, p. 189.

(22) Detroit Public Schools, Relationship of Income to Some Indices of High School Success in the Detroit Public Schools (1968), p. 12.

(23) Otto Kerner, et al., Report of the National Advisory Commission on Civil Disorders (1968) p. 90.

(24) Ibid.

(25) Speech by Dr. Norman Drachler, Superintendent of Detroit Schools, Potomac Institute School District Inequities Conference, November 9, 1968.

(26) Ibid.

(27) Ibid.

(28) Ibid.

(29) Detroit Public Schools, Comparative Study of School Taxes and Other Taxes in Detroit, Dearborn and Grosse Pointe (1968).

(30) Kerner, supra, n. 23.

(31) Comparative Study, supra, n. 29.

(32) Kerner, Supra, n. 23.

(33) Brown v. Board of Education, 347 U. S. 483 (1954).

(34) Hobson v. Hansen, 269 F. supp. 401 (D.C.D.C. 1967), Appeal Dismissed, U. S., 21 L. Ed. 2d 85, 89 S. Ct. 40 (1968).

(35) See generally Keppel, supra note 3; Conant, supra note 14; Arthur Wise, The Constitution and Equal Educational Opportunity (1968); Charles Daly (ed.) The Quality of Inequality: Urban and Suburban Public Schools (1968); Benson, The Cheerful Prospect (1965), John Coons, Private Wealth and Public Education (to be published by the Harvard University Press, 1969); Horowitz and Neitring, "Equal Protection Aspects of Inequalities in Public Education and Public Assistance Programs from Place to Place Within a State", 15 U.C.L.A.L. 787 (1968); Allen, supra note 10; David Kirp, "The Poor, The Schools, and equal Protection", 38 Harvard Educational Review 635 (1968); Campbell "Inequalities of School Finance" Saturday Review (January 11, 1968).

(36) Keppel, supra note 3; Address by Harold Howe II to Oregon Education Association (March 11, 1968).

(37) Dr. James B. Conant: Address to Education Commission of the States, Denver, Colorado (July, 1968).

(38) Allen, supra note 10, p. 56.